

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JUDY ENDERS/MADEN,)
)
)
Plaintiff,)
v.) C.A. No. 05-669-JJF
)
)
SUPER FRESH,)
)
)
Defendant.)

DEFENDANT'S MOTION TO COMPEL DEPOSITION

Defendant Super Fresh, by and through its undersigned counsel and pursuant to FRCP 37, hereby moves for the entry of an Order compelling Plaintiff Judy Enders/Maden to appear for deposition and for an award of associated costs and expenses to be entered in favor of Defendants and, in support thereof, states the following.

1. The present matter was initiated by Plaintiff when she filed a *pro se* Complaint on September 14, 2005. (D.I. 2). Discovery began in earnest in June 2006 and is scheduled to end on November 30, 2006. (D.I. 15).

2. There have been several Motions and Orders regarding discovery thus far. On October 6, 2006, Defendant filed a Motion to Compel in which it sought to preclude Plaintiff's spouse from attending Plaintiff's deposition and from deposing Defendant's witnesses. (D.I. 27). The Motion was granted by the Court on October 27, 2006. (D.I. 32).

3. Plaintiff then filed a Motion for Appointment of Counsel on November 8, 2006. (D.I. 33).

4. While that Motion was pending, Defendant filed a Letter to the court requesting guidance as to Plaintiff's upcoming deposition, (D.I. 35), which had been noticed to take place on Tuesday, November 21, 2006. (D.I. 34). Defendant expressed concern that

Plaintiff would either not appear or would appear under protest due to the pending Motion. (D.I. 35). Plaintiff made no objection to the Notice of Deposition.

5. The Court denied Plaintiff's Motion for Appointed Counsel on November 20, 2006. (D.I. 36).

6. Plaintiff did not appear at her properly noticed deposition scheduled for November 21, 2006 at 10:00 a.m. (D.I. 34). Discovery is scheduled to close on November 30, 2006. (D.I. 15).

7. Defendant's counsel has incurred \$176 in attorneys' fees and \$275 in costs in filing this Motion (including estimated court reporter fees). Plaintiff was also well aware that Defendant's counsel was traveling from New Jersey to take this deposition, the round-trip train service costs of which was \$193.

WHEREFORE Defendant respectfully requests this Court to enter an Order in form below compelling Plaintiff to appear for her deposition, pursuant to notice, which will be issued immediately following the entry of such Order.

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Margaret M. DiBianca, Esq.

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Admitted Pro Hac Vice
Attorneys for Defendant

DATED: November 21, 2006

CERTIFICATE OF SERVICE

I, Margaret M. DiBianca, Esquire, hereby certify that on November 21, 2006, I electronically filed a true and correct copy of **Defendant's Motion to Compel Plaintiff's Deposition** with the Clerk of the Court using CM/ECF. I further certify that on November 21, 2006, I caused to be served two (2) true and correct copies of the foregoing **Defendant's Motion to Compel Plaintiff's Deposition** on the following non-registered participant via postage prepaid, First Class Certified U.S. Mail/Return Receipt Requested:

Judy Enders/Maden
1 Laurel Ave.
Wilmington, DE 19809

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